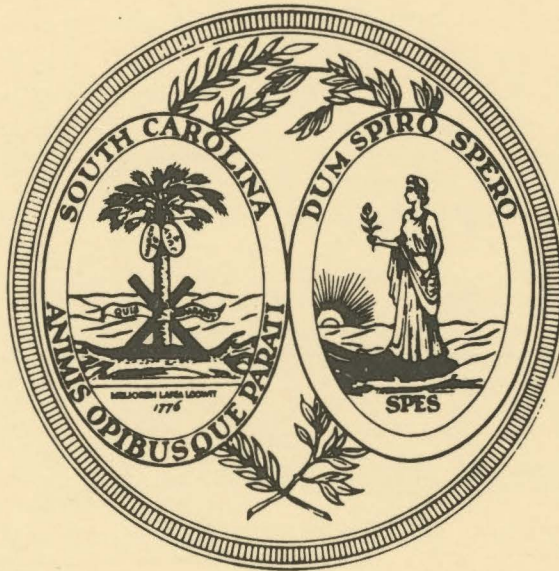


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The State of South Carolina
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Sunset Review of the
Board of Nursing
July 30, 1980

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF THE

BOARD OF NURSING

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REPORT SUMMARY

Act 608 of 1978 mandates the establishment of "... A system for the Review, Termination, Continuation or Reestablishment of State Agencies, Boards, Departments and Commissions." This is commonly referred to as the "sunset" act. Under this section of the law the General Assembly has set up a process for the "systematic review" of certain governmental entities so that it might be in a "better position to evaluate the need for their continuation, reorganization or termination." Section 6 of the Act lists 40 agencies, boards and commissions which are to be reviewed and sets termination dates for these entities. The Board of Nursing is scheduled to terminate on June 30, 1981.

Nurses are health care professionals and play an important role in the delivery of health care services to the State. Regulation provides the public a means to identify individuals qualified to practice nursing. During its review of the Board of Nursing the Council noted several areas where changes are needed. They are:

- Section 40-33-210 of the 1976 South Carolina Code of Laws, which sets forth the requirements concerning the selection and composition of the Board of Nursing, appears to be in violation of the South Carolina Constitution. According to an Attorney General's opinion, Section 40-33-210 appears to restrict the Governor's power to appoint six of the Board's seven members to only those persons who are members of certain private organizations. If the method of appointing Board members was challenged in court and ruled

unconstitutional, would create serious problems in the regulation of nurses (see p. 19).

- The potential for a conflict of interest exists with the current composition of the Board. One Board member, who is employed by a nursing school, discussed and voted on issues which directly affected the status of the school's nursing program. Policies and guidelines are needed to avoid situations where there may exist a potential for a conflict of interest (see p. 21).
- The Board has no written policies concerning the collection and use of compensatory time by professional staff persons. This has resulted in the accrual of compensatory time under a variety of circumstances. Also, it appears that compensatory time is being used in situations where annual leave would normally be used. Both the Board and the State need to promulgate detailed policies regarding the accrual and use of compensatory time (see p. 22).
- Because of the rapid growth of knowledge in the medical field the Board should require refresher courses for nurses who have been out five or more years, prior to them getting back into the field and expand voluntary continuing education and in-service training programs (see p. 25).

Overall, the Council found that the Board has performed its regulatory duties in an efficient and effective manner. The Board maintains adequate control over its property and is in compliance with the State's policies and procedures regarding travel and per diem. The complaint and disciplinary process is effective and the public is represented on the Board. The recommendations made should serve to improve the Board so that it might be as effective and efficient as possible. These areas are discussed in detail in the body of the report.

In performing this audit the Council examined Board files, records and memos. Interviews were held with Board members, staff, officials from other State agencies and private organizations. Board meetings were attended, and policies, procedures, and statutes were also examined. The following report is divided into two sections; Board Review and Sunset Issues and Evaluation.

BOARD REVIEW

Background and History

From 1909 to 1935 nursing and medicine were governed by the same practice act. As a result of Act 128 of 1935, the State Board of Examination and Registration of Nurses in South Carolina, presently known as the State Board of Nursing, was created.

The State Board of Nursing is composed of seven members: four registered nurses (RN's), two licensed practical nurses (LPN's), and one consumer member. Three of the RN's are nominated by the South Carolina Nurses Association and one RN is nominated by the South Carolina Hospital Association. The two LPN's are nominated by the South Carolina Federation of LPN's, Inc. The consumer member is appointed at-large by the Governor and must not represent any health interest group. All Board members are appointed by the Governor and may serve a maximum of two five-year terms.

The Board meets at least quarterly to examine applicants for licensure as RN's and LPN's, and for the transaction of other business such as (a) setting standards and policies for State accreditation of nursing schools and LPN programs; (b) hearing reports of surveys of nursing schools and LPN programs and ruling on their status of accreditation; (c) reviewing test questions for the State Board Test Pool Examination; and (d) conducting disciplinary hearings.

According to its five-year plan, the purpose of the Board is to develop and regulate the nursing profession in order to provide competent nurses for carrying out a viable health care delivery system. The Board is to accomplish this mandate "through the provision of a

responsive consultation service to schools of nursing ..., to Registered Nurses and Licensed Practical Nurses to upgrade their practice, to employers of Registered Nurses and Licensed Practical Nurses, through consumer participation, and by examination and endorsement of Registered Nurses and Licensed Practical Nurses."

Budget and Staff

During FY 78-79 Board expenditures totalled \$299,002 while receipts totalled \$305,317. The majority of expenditures were used for personnel, examination expenses, rent and employer contributions (see Table 1). The FY 79-80 budget totals \$367,912 and reflects similar expenditure trends. The Board's Five-Year Plan projects that by FY 83-84 expenditures will total \$532,544.

Per diem expenditures for Board members in FY 78-79 totalled \$2,170. Travel expenses for the same year totalled \$6,133. A review of the Board's per diem, travel expenses and property control showed that the Board is maintaining adequate control over its property and is in compliance with the State's policies and procedures regarding travel.

The Board's staff is composed of 16 persons, an Executive Director and 15 full-time classified positions. The professional staff consists of four program nurse consultants who are responsible for RN and LPN Examinations and School Programs, RN and LPN Endorsements, and continuing competency and disciplinary action. There is also a Special Investigator who handles complaints and an Administrative Assistant who supervises clerical staff and assists the Executive Director. The clerical staff consists of a Staff Assistant, an accountant and an accounting clerk, two data entry operators, a secretary-receptionist and three secretaries.

TABLE 1

BOARD OF NURSINGStatement of Revenue, Expenditures and Appropriations
Five-Year Period Ended June 30, 1980

	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u> (Estimated)
<u>Revenue Generated</u>					
Examination Fees	\$ 62,680	\$ 69,220	\$ 75,840	\$ 70,280	\$ 82,500
Endorsement Fees	42,760	42,930	48,860	50,120	54,000
Renewal Fees	138,320	136,430	143,715	150,613	200,060
Reinstatement Fees	10,638	9,703	11,708	16,415	13,000
Miscellaneous Fees	15,662	16,145	19,000	17,026	19,550
Miscellaneous Income	1,461		596	813	600
Private Independent Nurse			250	50	
Balance From Previous Year	91,871	*	*	*	*
Total Receipts	<u>\$363,392</u>	<u>\$274,428</u>	<u>\$299,969</u>	<u>\$305,317</u>	<u>\$369,710</u>
<u>Expenditures</u>					
Personal Service	\$ 99,871	\$118,500	\$154,428	\$155,764	\$206,524
Per Diem - Board	4,938	1,850	1,265	2,170	1,750
Travel	1,757	8,196	7,229	6,133	8,500
Telephone & Telegraph	2,520	2,852	4,211	5,468	4,200
Repairs - Equipment	1,355	1,434	1,849	1,902	2,000
Printing, Binding, Advertising	4,998	5,839	9,275	5,526	6,500
Examination Expenses	42,146	13,220	29,917	25,133	21,000
Professional Fees	392	3,359	1,650		1,100
Office Supplies	2,919	3,083	3,197	6,044	7,550
Postage	7,084	11,449	11,998	12,999	14,000
Rents	19,049	20,767	22,066	27,979	32,100
Office Equipment	12,998	2,017	5,757	4,732	1,250
Employer Contributions	15,274		24,605	25,202	31,557
Computer Services	6,653	9,142	14,756	10,723	13,550
Contingencies	10,230				
Insurance	368	938	994	1,049	1,250
Motor Vehicle		4,988	713	799	2,300
Other	254	1,326	2,016	8,178	10,831
Supplemental Appropriations					1,950
Total Expenditures	<u>\$232,806</u>	<u>\$208,960</u>	<u>\$295,926</u>	<u>\$299,002</u>	<u>\$367,912</u>
<u>State Appropriations</u>		<u>\$256,045</u>	<u>\$331,277</u>	<u>\$324,162</u>	<u>\$367,912</u>

* In 1976 the Board came under the Comptroller General and these balances went into the General Fund.

Licensure and Examination

Licensure

The State Board of Nursing regulates the nursing profession through the examination and licensure of Registered and Licensed Practical Nurses. In April 1980, there were 14,435 Registered Nurses and 7,099 Licensed Practical Nurses in the State. Section 40-33-530 of the 1976 South Carolina Code of Laws sets forth the requirements an individual must meet in order to become eligible for licensure as a Registered Nurse (RN). An applicant must:

- (1) be at least eighteen years of age;
- (2) be in good physical and mental health;
- (3) be of good moral character;
- (4) have completed at least four years of work in a high school accredited by the State Board of Education in the state in which the school is located or the equivalent of such work;
- (5) have completed a course of study in an accredited school of nursing; and
- (6) meet other preliminary qualification requirements as the Board may prescribe.

Section 40-33-730 lists the qualifications required of candidates for practical nurse licensure (LPN). Applicants must:

- (1) be eighteen years of age;
- (2) be of good moral character;
- (3) be in good physical and mental health;
- (4) have successfully completed two years of work in an accredited high school or the equivalent of such work;

- (5) have successfully completed the course of study in a school for the training of practical nurses or completed a course of study determined by the Board to be the equivalent thereof; and
- (6) have met such other preliminary qualification requirements as the Board may prescribe.

Upon fulfilling these requirements, a candidate is eligible to take the State Board Test Pool Exam (SBTPE) for licensure (see Examination, p. 10).

Temporary permits to practice nursing are issued by the Board to new graduates who have applied to take the State Board Test Pool Examination (SBTPE) or who have taken the exam and have not yet received their scores, and to endorsees. The permit is valid only until the scores are received and is nonrenewable.

In addition to licensure of RN's and LPN's, the Board requires specialty licensure of Private Independent Nurses (PIN). Because these nurses provide services directly to the public, the State Board of Nursing approves each PIN individually. In April 1980, there were 6 PIN's licensed in South Carolina. In addition to the application for approval as a PIN, the nurse must submit:

- (1) a summary of the services to be provided in private practice;
- (2) a statement regarding the need and support of such a service;
- (3) a list of written protocols to be developed and used in private practice.

In order to become licensed in South Carolina, graduates of foreign nursing schools must meet all of the licensure requirements for nurses in South Carolina. Foreign nurses who fully meet all qualifications,

except those relating to nursing education, may qualify for licensure by completing a supplemental course prescribed by the Board and passing the SBTPE. The supplemental course addresses all educational areas not previously covered.

Foreign nurses applying for licensure as RN's also may obtain temporary permits to practice in South Carolina if they pass a screening test administered by the Commission on Graduates of Foreign Nursing Schools (CGFNS). CGFNS screening tests are given twice a year in 28 countries. The Board has found that approximately 76% of nurses who pass the CGFNS exam also pass the SBTPE. Foreign nurses applying for licensure as LPN's may not be issued temporary permits.

The Audit Council examined the requirements for licensure and endorsement and found that the requirement of "good physical and mental health" is neither definable nor measurable and in the absence of detailed physical and psychological examinations does not ensure that handicapped individuals, who are fully capable of carrying out nursing duties, will not be discriminated against.

RECOMMENDATIONS

SECTION 40-33-730 SHOULD BE MODIFIED TO
BETTER DEFINE THE LICENSING REQUIREMENT
"GOOD PHYSICAL AND MENTAL HEALTH."

RULES 91-14 AND 91-16 OF THE RULES AND
REGULATIONS SHOULD ALSO BE MODIFIED TO
BETTER DEFINE THE ENDORSEMENT REQUIREMENT
OF "GOOD PHYSICAL AND MENTAL HEALTH."

Examination

Both the RN and LPN examinations are national exams owned by the National Council of State Boards of Nursing (NCSBN). The National League for Nursing Test Development Service, in conjunction with the NCSBN Examination Committee, designs and constructs the examination.

The RN exam is a two-day exam, administered twice a year, in February and July. It is given on the same two days in all 50 states, the Virgin Islands, and Guam.

The exam is divided into five parts: (1) Medical Nursing; (2) Surgical Nursing; (3) Obstetric Nursing; (4) Nursing of Children; and (5) Psychiatric Nursing. In order to pass the exam, a minimum score of 350 is required for each section. Candidates who fail all or part of the exam two or more times are required to complete approved remediation before retaking the exam. There are three remedial options available:

1. completion of appropriate nursing courses at an approved nursing school;
2. completion of a structured remedial program at an educational facility;
3. completion of a tutored program.

The Board staff provides guidelines to tutors in order to assist them in developing remedial programs and also aids candidates in securing tutors if this is the option they choose. If a candidate does not pass all parts of the examination within three years of graduation from an approved nursing program, he/she must requalify for the examination by enrolling in and completing requirements of an approved nursing program. Remedial instruction must be completed at least three weeks before the examination. These same requirements for remedial work also apply to LPN's.

One problem in South Carolina is that the passing rates of RN's on the SBTPE have been significantly below the national average as seen in Table 2. The Board is taking steps to remedy this problem. In the fall of 1980 those nursing programs (RN and LPN) whose passing rates on the SBTPE fall more than 5% below the national average may be cited as deficient by the Board.

TABLE 2
RN EXAM STATISTICS 1976-1979
FIRST-TIME CANDIDATES - SOUTH CAROLINA GRADUATES

<u>Exam Date</u>	<u>No. Taking Exam</u>	<u>% Passing</u>	<u>National % Passing</u>
February 1976	51	72.5%	81.4%
July 1976	575	80.2%	87.1%
February 1977	219	75.3%	84.8%
July 1977	615	77.1%	86.1%
February 1978	163	82.2%	84.6%
July 1978	663	76.5%	84.6%
February 1979	125	80.0%	83.6%
July 1979	612	77.8%	84.3%

The LPN examination is a one-day exam, given twice a year, in October and April. It is given on the same day in 49 states (except California, which administers its own exam), the Virgin Islands, and Guam. The examination tests LPN candidates in the areas of Medical Nursing, Surgical Nursing, Obstetrical Nursing, Pediatric Nursing

and Mental Health concepts. The candidate receives one score for all five areas tested. The minimum passing score recommended by the NCSBN for both RN's and LPN's is 350. Each state may set its own passing score for the SBTPE. South Carolina requires a score of 350. All states require a minimum passing score of 350 for RN's except Hawaii which requires a score of 375. All but five states require a 350 score for LPN's. These five states require higher scores. If a graduate of a practical nursing program does not become licensed within three years of graduation, he/she must requalify to take the SBTPE.

The following Table shows the pass/fail rate for LPN candidates in South Carolina who are taking the exam for the first time.

TABLE 3
LPN EXAM STATISTICS 1975-1979
FIRST-TIME CANDIDATES - SOUTH CAROLINA GRADUATES

<u>Exam Date</u>	<u>No. Taking Exam</u>	<u>% Passing</u>	<u>National % Passing</u>
April/July 1975	327	91.5%	93.1%
October 1975	162	91.9%	93.6%
April 1976	123	95.4%	92.4%
October 1976	475	94.0%	93.3%
April 1977	109	93.8%	93.1%
October 1977	516	91.4%	92.9%
April 1978	127	92.3%	92.6%
October 1978	463	89.3%	92.2%
April 1979	94	87.2%	92.4%
October 1979	374	91.0%	Unavailable

Fees

The total operating cost for the Board is derived from State appropriations which are recouped by charging licensing and examination fees (see Table 4). In FY 78-79 the fees charged by the Board totaled \$305,317. The Board estimates that this will increase to \$369,710 in FY 79-80 and \$393,315 in FY 80-81.

TABLE 4
SCHEDULE OF FEES AS OF JUNE 1980*

Registered Nurse

Examination	\$50.00
Endorsement	\$50.00
Re-examination	\$50.00

Licensed Practical Nurse

Examination	\$30.00
Endorsement	\$30.00
Re-examination	\$30.00

Other Services

RN & LPN Annual Renewal	\$10.00
RN & LPN Reinstatement	\$20.00
Temporary Permit	\$ 5.00

* Other miscellaneous fees not listed.

Endorsement

South Carolina offers endorsement to RN's and LPN's registered in other states, territories, and foreign countries provided the individual qualifications of the nurse meet statutory and Board requirements and the required fee is paid. Requirements include:

1. A notarized application form provided by the Board;
2. One photograph, signed and dated;
3. Age, at least eighteen years - birth certificate must be filed;
4. Application fee--RN - \$50.00 and LPN - \$30.00
5. Good physical and mental health;
6. Good moral character;
7. Graduation from an accredited school of nursing or practical nursing program,
8. Verification of authorization to practice as an RN or LPN in another jurisdiction and of certification issued on the basis of a recognized licensing exam. A standard score of 350 must have been attained on each test included in the licensing examination.

General education and education for nursing must be on the same level required of South Carolina graduates applying for licensure for the first time. The records submitted with the application are evaluated on the basis of requirements of the State Board for Nursing for South Carolina which were in effect at the time of the applicant's licensure in the other jurisdiction. The applicant's interim experiences, as related to current requirements, are also considered. The SBTPE is the only examination South Carolina recognizes as fulfilling the requirements for endorsement. Every state now uses the SBTPE for RN's and all states except California use the SBTPE for LPN's. Temporary permits to practice are available to endorsees.

Table 5 shows the number of nurses licensed in South Carolina by endorsement during the five-year period from 1974 to 1979.

TABLE 5
LICENSURE BY ENDORSEMENT - 1974-1979

<u>Fiscal Year</u>	<u>1974-75</u>	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>
RN	774	821	754	875	749
LPN	213	215	263	184	212

Complaints and Disciplinary Action

Review of the complaint process found that the Board is effective and efficient in this area. Complaints were reviewed for the four-year period from calendar year 1976 through 1979. Out of a total of 99 complaints received during this period, 98 were made by employers of nurses while only one was made by a member of the public (see Table 6).

The special investigator for the Board handles all complaints. The investigator records the complaint and begins to gather evidence on the case. The Board works with the Department of Health and Environmental Control (DHEC) when investigating drug complaints, particularly those involving drug diversion in hospitals. If a criminal proceeding ensues, the Board waits until after the trial (or other disposition) to initiate disciplinary action, in order to avoid conflict with the court case.

After a preliminary investigation, the investigator presents the case at the earliest possible Board meeting and requests a formal complaint and investigation. The Board may then issue a complaint against the respondent nurse's license. The nurse is served a notice and allowed 20 days to respond. He/she receives 15 days notice of the hearing date and is given the opportunity to appear before the Board, with or without legal counsel. A hearing is held by a panel consisting

of at least two Board members. The State Attorney General's Office represents the Board before the panel. The Board of Nursing has subpoena power and can subpoena witnesses for both sides. The panel deliberates in private after the hearing and makes its decision. Then the special investigator drafts a certified report which includes (a) a summary of the case; (b) findings of fact; (c) conclusions of law; and (d) recommendations for sanction.

Following the panel hearing, the respondent is sent notice of a full Board hearing where the Board meets to examine the panel's certified report, the transcript, and render a decision on the case. The Board may make one of the following final decisions: (a) approve the panel report without modifications; (b) add conditions; (c) dismiss the case; or (d) change the sanction (see Table 7). The respondent receives notice of the full Board action and may appeal the decision to Circuit Court if a petition is filed within 30 days.

Sanctions used by the Board include the following: (a) private or public reprimand; (b) suspension - suspension of a nurse's license is either for a definite period of time (usually 1, 2, or 3 years) or indefinite; (c) stayed suspension - suspension of a license is lifted subject to conditions placed on the nurse by the Board; (d) probation - the nurse may continue to practice but under close scrutiny of the board; and (d) revocation - revocation of a nurse's license is permanent in South Carolina.

The majority of complaints against nurses are for drug-related offenses. The Board works with DHEC's Bureau of Narcotics and Drug Control in the investigation of drug violations (see Table 6).

TABLE 6

COMPLAINTS RECEIVED FROM JANUARY 1976 TO DECEMBER 1979

<u>Type of Complaint</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
Drug-Related	12	6	13	44	75
Felony	1	1	2	2	6
Professional Incompetence	1	1	-	-	2
Mental Incompetence	1	1	2	1	5
Practicing Without a License	-	1	1	-	2
False Transcripts	-	1	1	-	2
Patient Abuse	-	-	1	1	2
Unprofessional Conduct	-	-	-	1	1
Unauthorized Practice	-	-	-	1	1
Falsifying Med. Records	-	-	1	1	2
Other	<u>-</u>	<u>-</u>	<u>1</u>	<u>-</u>	<u>1</u>
TOTAL	15	11	22	51	99

TABLE 7
SUMMARY OF BOARD ACTION ON COMPLAINTS
RECEIVED FOR CALENDAR YEARS 1976-1979

<u>Type of Complaint</u>	<u>No. of Complaints Received</u>	<u>Board Action Taken</u>		
		<u>Stayed Suspension</u>	<u>Suspension</u>	<u>Revocation</u>
Drug-Related	75	5	16	3
Felony	6	1	2	-
Practicing Without a License	2	1	-	-
Mental Incompetence	3	-	2	-
False Transcripts	2	-	-	2
Falsification of Medical Records	<u>2</u>	<u>1</u>	<u>-</u>	<u>-</u>
TOTAL	90	8	20	5

The number of reported violations has increased markedly during 1979. This trend has been attributed chiefly to the growing awareness of employers of their responsibility to report violations to the Board. The Board's staff has been holding workshops throughout the State on "Legal Aspects of Nursing" in an attempt to make nurses and employers of nurses more aware of their responsibility. The workshop has also been made available to many nurses through closed circuit television talk-back shows. A member of the Board's staff will answer questions telephoned in by viewers after the initial presentation has been aired.

In 1976, the Board began recording complaint and disciplinary information on computer. This system provides detailed information about licensees who have been disciplined or are currently under investigation and is a significant improvement over the previous manual filing system.

Questionable Constitutionality of Board Selection Process

Section 40-33-210, which sets forth requirements concerning the selection and composition of the State Board of Nursing, appears to be in violation of the South Carolina Constitution. The statute calls for a seven-member Board: four RN's, two LPN's and one consumer member. Three of the RN's must be members of the South Carolina Nurses Association (SCNA). In addition, one RN must be a member of the South Carolina Hospital Association (SCHA) as well as the SCNA. The two LPN's must be members of the South Carolina Federation of Licensed Practical Nurses, Inc. (SCFLPN). The consumer member need not belong to any particular organization.

According to a June 27, 1979 Attorney General's opinion, Section 40-33-210 of the Nurse Practice Act appears to restrict the Governor's power to appoint six of the Board's seven members to only those persons who are members of certain private organizations, i.e. the SCNA, the SCHA and the SCFLPN. The opinion states that in effect, the three organizations possess "the unbridled authority" to determine who is eligible for appointment to a prescribed number of seats on the Nursing Board. The statute thus appears to violate Article III, Section I of the State Constitution in that it limits the Governor's power of appointment simply to those who are members of designated organizations.

The Attorney General's Opinion cites the case of Gold v. South Carolina Board of Chiropractic Examiners, 245 S.E. 2d 117 (1978) in which the Supreme Court of South Carolina invalidated the section of the Chiropractic Act which limited the Governor's authority to appoint members to the Board of Chiropractic Examiners to only those persons who are members of the South Carolina Chiropractor's Association. Article III, Section I of the State Constitution prohibits delegation of the appointive power to a private person or organization (Gold v. Barton, 256 S.C. 175, 181 S.E. 2d 662 [1975]).

The Supreme Court in Gold v. Barton noted that by restricting the Governor's authority to appoint members of the Board to those persons who are members of the Association, a private organization, membership in the Association becomes a prerequisite to membership on the Board. "Since the Association's ability as a private organization to control its membership is absolute, the Association possesses the unbridled authority to determine who is eligible for appointment to the Board." The Court's opinion also states that such authority is tantamount to an express grant of the appointive power which, when placed in the hands of a private organization, violates Article III, Section I. The Court concluded by stating that on its face Section 40-9-30 (of the Chiropractic Act) violates Article III, Section I by unconstitutionally delegating the appointive power to a private organization.

Under the current statute it is possible that the authority of the Board could be challenged in court. If the method of appointing Board members was ruled unconstitutional, this would create serious problems in the regulation of nurses, possibly endangering the public's health, safety and welfare.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING SECTION 40-33-210 OF THE 1976 CODE OF LAWS TO CHANGE THE METHOD OF APPOINTING BOARD MEMBERS IN ORDER TO PREVENT ANY QUESTION OF CONSTITUTIONALITY WHICH MAY ARISE FROM THE PRESENT METHOD OF APPOINTMENT. THE GOVERNOR'S AUTHORITY TO APPOINT BOARD MEMBERS SHOULD NOT BE RESTRICTED TO ONLY THOSE PERSONS WHO ARE MEMBERS OF CERTAIN PRIVATE ORGANIZATIONS. PRIVATE ORGANIZATIONS SHOULD MERELY BE PERMITTED TO MAKE RECOMMENDATIONS FOR NOMINATION OF INDIVIDUALS TO THE BOARD.

Potential Conflicts of Interest

The Council reviewed the conduct of Board business in conjunction with the groups regulated by Board actions and determined that there are potential areas of conflict of interest. Board minutes and interviews indicate that one Board member, who is employed by a school of nursing, participated in the discussion of, and later voted on, several resolutions and motions which directly affected the status of that school's nursing program. Most recently, the Board member seconded a motion which resulted in this nursing program not being issued a warning for having inadequacies in its program. This type of action could seriously threaten the credibility of the accreditation process.

This situation has resulted from a lack of guidelines or rules governing the Board in this area. Regulatory boards should avoid

situations where an individual's self-interest conflicts with regulatory duties and responsibilities. The Council examined other boards and found that persons affiliated with schools training professionals are not allowed to serve on the boards. For example, Section 40-15-20 of the 1976 South Carolina Code of Laws governing the Board of Dentistry prohibits a Board member from being "officially connected with a school of dentistry." The Board of Nursing needs a policy which would disqualify members from discussing or voting on issues or cases in which there is the potential for a conflict of interest to exist.

RECOMMENDATION

THE BOARD SHOULD PROMULGATE POLICIES AND PROCEDURES TO AVOID SITUATIONS WHERE THERE EXISTS POTENTIAL FOR A CONFLICT OF INTEREST, INCLUDING A POLICY WHICH REQUIRES A MEMBER TO NEITHER DISCUSS NOR VOTE UPON AN ISSUE WHICH MAY CONFLICT WITH THE BOARD'S DUTIES AND THE MEMBER'S OWN SELF-INTEREST.

Need for Compensatory Time Policies

The Board has no formal written policies on the collection and use of compensatory time by professional staff members. Compensatory time records are kept by each professional staff member. As a result, compensatory time is collected under a variety of circumstances and is used for many purposes.

Professional staff have accrued compensatory time when making out-of-town visits which exceed an eight-hour working day, including travel time. Examples of this include as much as 10 hours compensatory

time accrued while attending a National League of Nursing meeting. Another staff member accrued 6 hours for travel time while attending a nursing education conference. Examples also include the accrual of 30 minutes compensatory time while completing a survey of a nursing program or giving a legal workshop. Staff members also keep a record of working lunches, receptions and in one case, 3 hours for a dinner to add as compensatory time.

Professional staff have accrued many hours of compensatory time which have been carried over for months. Although in most cases staff members used this leave an hour or two at a time, one staff member took a three-day vacation on compensatory time instead of using annual leave. Two staff members have used compensatory leave to attend graduate school during office hours.

The State has promulgated few regulations concerning compensatory time and the Board has not established comprehensive policies in this area. Although the State does not have specific regulations covering all areas of compensatory time, several rules do exist. According to the State Personnel Policies and Procedures manual, an employee who works on a holiday is given compensatory time for that day. "Each agency is required to keep an accurate record of all hours worked and all leave taken. Leave shall be recorded in the appropriate categories and shown as either paid leave or leave without pay." In addition, the manual states that "the ultimate responsibility for the accuracy and proper maintenance of attendance and leave records rests with the agency head." It also provides that "Falsification of any attendance or leave record shall be cause for disciplinary action up to and including dismissal."

The State Personnel Division's internal regulations offer a model to other agencies. The Division's own policies state that "employees, with certain exceptions, are eligible for compensatory leave on an hour-for-hour basis... Employees who are eligible for compensatory leave may work in excess of the normal workweek only at the request of, or with prior authorization by a section director or higher authority. Before compensatory leave is taken, it must be requested and approved in writing by the section director. Compensatory leave shall be taken within ninety (90) days after the leave is earned." State Personnel lists those positions eligible for compensatory time. In general, these positions are secretary/ clerical and data processing.

The Council examined leave practices at 20 other agencies and found that in a majority of cases the "professional" staff are not allowed to claim compensatory time except in unusual circumstances. Generally, professionals are expected to work until a task is completed. Working lunches and other overtime are part of the job and responsibility of being a professional. Compensatory time is not claimed for intervals of 30 or 60 minutes, or time spent on out of town trips.

As a result of the lack of Board policies in this area and the practices found, the Board has inadequate control over professional employee leave. The accrual and use of large amounts of compensatory time allows the employee to build up greater than normal amounts of annual leave. When an employee leaves State employment, annual leave must be paid to the person in a lump sum. Unexpected cash flows of this type may have a detrimental effect on an agency's budget.

RECOMMENDATION

THE STATE AND THE BOARD SHOULD DEVELOP DETAILED POLICIES AND PROCEDURES CONCERNING THE RECORDING, REPORTING AND TAKING OF COMPENSATORY TIME. SUCH POLICIES SHOULD INCLUDE A LIST OF POSITIONS ELIGIBLE FOR COMPENSATORY TIME AND A LIST OF THE CIRCUMSTANCES UNDER WHICH ACCUMULATION OF COMPENSATORY TIME IS PERMITTED.

Continuing Education/Continuing Competency

South Carolina has no requirements which mandate continuing education for nurses. In South Carolina, continuing education for nurses is offered on a voluntary basis through universities, technical colleges, the Area Health Education Centers (AHEC) and the Continuing Education Approval and Recognition Program (CEARP) of the South Carolina Nurses Association.

The issue of continuing education has gathered significant interest over the last five years. Currently, 12 states require between 5 and 15 hours of continuing education annually, or 30 hours biannually. Two other states have the option of requiring continuing education through their rules and regulations. Seven states have the authority to require continuing education for certain categories of nurses such as inactive nurses, nurse anesthetists, advanced registered nurse practitioners and nurses with lapsed, suspended or revoked licenses.

The Board of Nursing has a professional staff member who serves as Program Nurse Consultant for Continuing Competency. This is a new position which is in the process of examining various methods to

ensure continuing competency among nurses. One method is mandatory continuing education. However, the Board believes that required continuing education credits do not necessarily ensure continuing competency in nursing, so it advocates the examination of other alternatives. One alternative method is voluntary continuing education, which exists today. Another alternative to ensure continuing competency is periodic reexaminations, possibly every five or six years. California currently has a dual option wherein a nurse may either take courses under a continuing education program or submit to a reexamination for continuing competency.

A third alternative is intensive in-service training. Most hospitals with 200 or more beds have in-service training departments which offer workshops to employees in the hospital setting. The content of these workshops is usually more limited than continuing education courses. However, since the workshops are held in the hospital work setting, they reach more nurses than courses at outside educational institutions.

One major problem in the area of continuing education or continuing competency is the possible incompetency of nurses who return to practice after several years of inactivity. The rapidly changing technology in the nursing field renders many nursing practices obsolete in a matter of months or years. Therefore, these nurses need refresher courses before returning to work to bring them up-to-date on current knowledge and practice. Some technical colleges are already offering refresher courses to nurses returning to practice after an absence of five or more years.

In 1976, the South Carolina Nurse's Association (SCNA) issued a report on mandatory versus voluntary continuing education. The

association made several recommendations including: (1) there should be no continuing education requirements for relicensure in South Carolina at this time; (2) a stepped-up educational program on voluntary continuing education should be developed; (3) the Board of Nursing should require evidence of continuing education for those nurses whose licenses have expired for nonpayment of fees for a certain period of years; (4) the Board should require continuing education for relicensure of applicants who have not practiced nursing for a period of five years; and (5) an institutional recognition program should be approved by the Continuing Education Approval and Recognition Program (CEARP) if these providers offer approved continuing education courses for RN's and LPN's. This would allow nurses in both urban and rural areas opportunities for continuing education in a home-based program.

Improved voluntary continuing education and in-service training, as well as mandatory refresher courses, for nurses returning to practice should contribute significantly toward continuing competency.

RECOMMENDATIONS

THE BOARD SHOULD DEVELOP COMPREHENSIVE REQUIREMENTS CONCERNING CONTINUING EDUCATION/COMPETENCY. THESE REQUIREMENTS SHOULD INCLUDE:

- (1) REFRESHER COURSES SHOULD BE REQUIRED FOR BOTH RN'S AND LPN'S WHO HAVE BEEN INACTIVE FOR FIVE YEARS OR MORE.

(2) VOLUNTARY CONTINUING EDUCATION AND
IN-SERVICE TRAINING PROGRAMS SHOULD
BE EXPANDED.

Accreditation

Section 40-33-110 of the Nurse Practice Act states that "the Board shall register as accredited such schools of nursing as shall meet the requirements of the Board as to courses and standards. It shall prescribe curricula and standards for schools and courses preparing persons for registration or licensing under this chapter. It shall provide for surveys of such schools and courses at such times as it may deem necessary. It shall accredit such schools and courses as meet the requirements of this chapter and the Board. ..."

Nationwide, 47 out of 51 State boards accredit RN school programs and 46 boards accredit LPN programs. These boards offer approval only on the State-level. For national accreditation, a nursing program must apply to the National League of Nursing and undergo their accreditation process. Currently, 2 out of the 29 LPN programs and 7 out of the 15 RN programs in South Carolina are nationally accredited.

In South Carolina, there are three levels of accreditation status.

1. Initial accreditation is the temporary status assigned to nursing programs which have just been approved by the Board of Nursing and the Commission on Higher Education.
2. Full accreditation is given after the initial period if the program is operating in accordance with standards established by the Board.

3. Conditional accreditation is given if deficiencies are found in a program and are not remedied within a specified period of time. A program is first issued a warning and assigned a period of time to improve its deficiencies. If the program has not improved sufficiently within the period of time stated, the unit is assigned a status of conditional accreditation. A unit assigned this status is given up to one year to elevate its standards to a level acceptable to the Board. If this is not accomplished, the nursing program loses its accreditation.

Three of the Board's professional staff are involved in the accreditation process. Two are responsible for the 29 LPN programs; one is responsible for the 15 RN programs. These staff members make annual survey visits to each nursing program for the purpose of approving them for accreditation. During a survey they visit with school administrators, program coordinators, faculty and students and inspect both the school and at least one clinical facility used by the program. Board staff examine areas such as budgeting, staffing, curriculum, clinical resources, program materials, textbooks, testing, faculty-student ratios, student performance and passing rates on the State Board Test Pool exam. They then write survey reports which are submitted to the Board for use in its decision on the program's accreditation status.

Several other agencies work cooperatively with the Board of Nursing in monitoring nursing programs. The Board of Technical and Comprehensive Education works with the Board of Nursing in the establishment of new nursing programs, the expansion of programs, the termination of programs, and changes in curriculum for programs in State technical colleges. The Technical Education Board is also represented on the

Statewide Master Planning Committee, which is the advisory committee for planning for nursing education established by the Commission on Higher Education and the Board of Nursing. The State Department of Education accredits the vocational schools where a number of LPN programs are housed. Because nursing programs are housed in several different types of institutions (i.e., hospitals, vocational schools, technical colleges and universities), there are a number of agencies who monitor them. Although there appears to be some overlap in the duties and responsibilities of these agencies, the duplication of service is minimal.

Schools which violate Board accreditation policies may be cited for deficiencies. If the deficiencies persist, the cited school's accreditation status will be affected. In the past ten years, one school of nursing has lost its State accreditation and several nursing schools have been issued a warning. Beginning in the fall of 1980 those nursing programs whose passing rates on the SBTPE fall more than 5% below the national average may be cited as deficient by the Board.

Nursing Shortage in South Carolina

A major problem facing nursing in South Carolina is the shortage of nurses. This shortage primarily affects hospitals, where the supply of nurses almost never meets the demand.

The Board members have various opinions as to the character and severity of the shortage. Several Board members stated that there may be a shortage of "active" nurses rather than an actual shortage. According to Board members and staff, low wages have discouraged many nurses from working. Other problems facing hospital nurses are the disadvantages of shift work, weekend work and the difficulty of

finding childcare for night shift workers. Other Board members felt strongly that nurses are not always used properly (i.e., LPN's and RN's often have the same duties regardless of education) and are not distributed evenly throughout both the State and various facilities.

In the spring of 1980 the Board participated in a public hearing which addressed the nursing shortage. The Board has also met with representatives from the Hospital Association, the Medical Association, the Nurses Associations and other interested groups to discuss this problem. Various recommendations have been considered, such as foreign nurse recruitment and recruitment of inactive nurses. However, the different associations and the Board have been unable to agree on a solution.

RECOMMENDATION

THE BOARD OF NURSING SHOULD CONTINUE TO
WORK WITH THE HOSPITAL ASSOCIATION, THE
STATEWIDE MASTER PLANNING COMMITTEE, THE
MEDICAL ASSOCIATION, HEALTH SYSTEMS AGENCIES,
THE NURSES ASSOCIATIONS AND OTHER INTERESTED
GROUPS TOWARD A SOLUTION TO THE NURSING
SHORTAGE.

Public Participation

The Board of Nursing has encouraged the participation of the public, the medical profession and the nursing profession in its activities. In 1975, the composition of the Board was revised to add a consumer member who is appointed by the Governor and does not represent any health interest group.

As required by Section 40-33-410 of the 1976 Code of Laws, four licensed physicians are appointed by the South Carolina Medical Association (SCMA) "to provide consultation to the State Board of Nursing in the development of rules and regulations relating to nursing practices, and on other matters requested by the Board." Examination of Board minutes showed that physician consultants rarely attend Board meetings. It appears that there may be a lack of regular communication between physician consultants and the Board. Because of the nature of the physician-nurse relationship, it is important to have effective communication and cooperation between these two groups. Better use of physician consultants by the Board of Nursing could improve communication and cooperation significantly.

Board meetings are open to the public. They are advertised in the Board's quarterly newsletter to all employers of nurses, in the annual newsletter to all nurses and in major newspapers throughout the State.

The Board has held public hearings in different parts of the State on nursing-related issues: fee increases, the nursing shortage, and the administration of drugs by unlicensed personnel. Hearings are publicized in major State newspapers. Also, the Board's staff has held workshops throughout the State on a variety of subjects such as "Legal Aspects of Nursing." These workshops are geared toward nurses, employers of nurses, consumers and other groups.

SUNSET ISSUES AND EVALUATION

Act 608 of 1978, known as the Sunset Law, contains a series of eight issues which must be addressed in the review of each agency. These requirements encompass the areas of efficiency and effectiveness which will ultimately determine the termination, continuation, or re-establishment of the agency and will also supply to the General Assembly an indication of the agency's public responsiveness and regulatory compliance. The issues and the Audit Council's responses are presented in the following section.

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The programs and functions of the Board do not directly affect the cost of nursing services in South Carolina. The cost of regulation is covered by licensing fees paid by RN's and LPN's. The Audit Council found no measurable increases or reductions of the cost of services as a direct result of the existence or actions of the Board.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The Board was created in 1935 to regulate the practice of nursing in South Carolina and safeguard the public's interest. It

has sought to achieve these goals through the examination and licensure of nurses, accreditation and monitoring of nursing education programs, and the complaint/disciplinary process.

Without the examination and licensure process there would be no guarantee of nursing competence. The loss of the accreditation and monitoring function would result in poorer quality nursing programs. Also, without the Board there would be little recourse for the public in the area of complaints. In conclusion, without the Board there would be no assurance to the public of minimum standards of nursing care.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The overall cost of the agency in FY 78-79 was \$299,002. Projected expenditures for FY 79-80 totaled \$367,912. The Board employs 16 staff members which accounted for \$155,764 (52%) of its FY 78-79 expenses. A detailed analysis of State appropriations, revenue generated and expenditures for the five-year period ended June 30, 1980 is presented in Table 1 on page 6.

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The main function of the Board is the testing and licensing of applicants. The Board has developed standards and guidelines in this area and carries them out in an efficient manner (see p. 7).

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Board has encouraged the participation of the public and the nursing profession in its activities. Board meetings are open to the public. They are advertised in the Board's quarterly newsletter to all employers of nurses, annual newsletters to all nurses and in major newspapers throughout the State.

The Board has held public hearings in different parts of the State on nursing-related issues. Hearings are publicized in major State newspapers. Also the Board's staff has held workshops throughout the State on a variety of subjects such as "Legal Aspects of Nursing." These workshops are geared toward nurses, employers of nurses, consumers and other groups.

The Board has one consumer member. There are also four physician consultants to the Board. Because of the nature of the physician-nurse relationship, it is important to have effective communication and cooperation between the Board and the physician consultants. Better use of physician consultants by the Board of Nursing could improve communication and cooperation significantly (see p. 32).

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Board duplicates no function of any other State, Federal or other agency. The Board of Nursing is the only agency authorized to administer the laws, rules and regulations governing the practice of nursing in South Carolina.

The Board works cooperatively with State agencies. The special investigator works with DHEC in the investigation of drug violations. The Board also works in cooperation with the State Commission on Higher Education, the State Department of Education and the Board for Technical and Comprehensive Education in the accreditation of nursing programs. However, there is no duplication of services.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Board acts upon the majority of complaints in an efficient manner. The number of reported violations has increased markedly during 1979. There is a full-time special investigator to handle these complaints (see p. 15).

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The current method of appointing Board members may be unconstitutional (see p. 19). The Board and the State also need to establish formal guidelines concerning the proper use of compensatory time by its staff (see p. 22).

APPENDIX

APPENDIX 1

Telephone:
(803) 758-2611

Suite 102
1777 St. Julian Place
Columbia, S. C. 29204

State Board of Nursing for South Carolina

July 3, 1980

Mr. George Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Dear Mr. Schroeder:

It has been an interesting and time consuming process to participate with your staff in "Sunset Review". The philosophy of the Board of Nursing has been one of strong belief in programmatic evaluation with the outcome resulting in even greater public accountability by the agency. You can be assured of our commitment to carefully study the Legislative Audit Council's report and recommendations and to implement corrective actions as feasible and appropriate.

Our audit began February 22, 1980 and concluded May 20, 1980. During that time your auditors, Mrs. Ann Carruth and Ms. Curry King, were considered as members of the agency's staff. The audit process required our staff to copy over 12,000 pieces of printed materials for your agency and, considering Board members and staff members' time, we would comment that it was a thorough, exhaustive, and expensive procedure. Our comments will be directed toward clarifying certain aspects of the report, responding to certain recommendations, and providing actions of the Board to implement other recommendations.

In general, the report is a fair and accurate evaluation of the Board's role and responsibility to the citizens of South Carolina. The Board of Nursing's mission by legislative mandate Chapter 33, Section 40, is to assure the public that the 16,349 Registered Nurses and 7,761 Licensed Practical Nurses regulated by this agency meet essential requirements for providing safe and effective nursing care. This mission is accomplished through four broad programs -- examination services, endorsement services, school accreditation, and disciplinary activities. A nationally recognized data collection system on nursing manpower undergirds all these programs. These activities are provided statewide and are accomplished with a high degree of quality by a small staff totaling sixteen. The staff includes four full-time registered nurses, one part-time registered nurse and one investigator. The agency has not added any additional staff positions since 1977.

The seven(7) member board, although only required by law to meet at least quarterly, has conducted this year twenty days of disciplinary hearings, assisted in administering the four examinations, held a called meeting, met to review questions for the examinations, held four Board meetings and attended many meetings on nursing issues. The demand for Board Members' time has also been great. Three of the Board members do not even receive per diem.

Financially, the agency's programs are funded on fees charged for services. The agency contributed to the General Fund of the State \$130,691.00 in 1976 when carry over funds by agencies were discontinued. In 1977, \$65,468.00 was contributed to the general fund, \$4,043.00 in 1978, and \$6,315.00 in 1979. It would be useful to designate this contribution of South Carolina nurses to a special scholarship fund for eligible nursing students to further assist in alleviating the nursing shortage.

In reference to the recommendation in the report to define good physical and mental health, this has been defined by the Board through the applications for licensure by examination to mean a physical examination given by a licensed physician where the applicant's physical and mental health is assessed and attested to by the physician. This physical examination is to occur within the three month period of filing the application. For the applicant for endorsement, the health status of the nurse is reviewed based on the legal affidavit of the applicant nurse attesting to her physical and mental health, submitting her health record, and the name and address of her physician.

The National Council of State Boards of Nursing along with the state boards, legal counsel and the National League of Nursing have developed provisions to assure that the State and Federal statutes which provide that "otherwise qualified handicapped" shall not be excluded from participation in, denied the benefits of, or be subjected to discrimination solely by reason of his/her handicap from being licensed by examination as a Registered Nurse or Licensed Practical Nurse. These provisos have been reviewed by the Department of Health, Education and Welfare. The contract of the South Carolina State Board of Nursing for Registered Nurse Licensure and Practical Nurse Licensure states:

"It is, however, the intent of Council and the parties hereto that no handicapped candidate as defined in federal or state statutes, otherwise qualified, shall be deprived of the opportunity to take the Tests, solely by reason of that handicap. Accordingly, Test Service, with the approval of Council, is prepared to make reasonable modifications of the examination procedures prescribed herein in order to meet such candidate's special needs. Such request shall be submitted by the BOARD to Test Service in writing at least one hundred twenty(120) days prior to the scheduled examination date to facilitate the necessary modifications."

The Manual for administering the examination further states:

"Well in advance of the session, check to determine if modification in the examination procedure has been authorized to meet special needs of one or more handicapped candidates."

Regulation 91-20 of the Laws Governing Nursing requires that:

"A nurse who applies to the Board for a certificate of registration or licensure or for a certificate of renewal of license to practice, who has been or is a patient in a state mental hospital or other institution or clinic for treatment of mental illness, must furnish the Board proof of mental competence and competence to assume the responsibilities of the practice of nursing before said application will be considered by the Board."

This provision is not intended to deny licensure to the nurse who has undergone mental health treatment but to assure the public that those who are practicing nursing meet the minimum essential requirements for safe and effective nursing practice.

The Board will be pleased to work with you, the Reorganization Commission, and the Attorney General's Office to develop additional statutory definitions or policies to assure the public that licensees meet a general standard of good physical and mental health.

In response to the recommendation on the composition of the Board, the Board wrote the attorney general's office in May of 1978, upon receiving the South Carolina Supreme Court ruling on the Gold vs. The Board of Chiropractic Examiners, and drafted with their assistance proposed language to remove from the Nurse Practice Act any language that might be considered unconstitutional. We met with the Reorganization Commission to have the bill include the addition of another consumer member as recommended by the Commission and an additional L.P.N. Member. We met with the Board of Medical Examiners to discuss a mechanism for the appointment of the physician consultants through the Board of Medical Examiners rather than through the Medical Association.

Unfortunately, this bill, though introduced in the 1978, was never enacted and died at the adjournment of the 1980 General Assembly. The Board has met and corresponded with the attorney general's office including the antitrust division, but it has never received nor seen the opinion requested by you in 1979 in which you request specific information on the constitutional nature of the composition of the Board of Nursing. However, this opinion will be additional supporting evidence as we work with the Reorganization Commission in drafting proposed changes in the statute this Fall.

The issue of the shortage of nurses is of vital interest to the Board of Nursing. Various groups over the state have organized to study the issues as they impact on health services in their area. The Board of Nursing has acted as an advisor and resource to numerous groups.

With the assistance of statistics gathered through renewal of nurse licenses, the Board of Nursing monitors the mobility of nurses in the state. We have developed with the Division of Research and Statistics of the Budget and Control Board trend data to be used in projecting future nurse requirements. It is evident in these statistics that the source of new nurse manpower into the system is almost equally divided into three segments - new graduates from schools of nursing, endorsement from other states and nurses returning to the work force from the inactive status.

The Board with the Commission on Higher Education sponsors the Statewide Master Planning Committee on Nursing Education. It is composed of twenty-nine members representing many disciplines and all areas of the state. This committee is advisory to the two agencies and has identified several broad purposes: 1) To develop a long range plan for nursing education in the state based on statewide need, 2) To identify national, regional, and local trends in the nursing profession, in health care delivery, and in higher education as it impacts on nursing, 3) To participate in the assessment of review of existing and proposed nursing educational programs and make recommendations concerning their relationship to the long range plan and 4) Submit recommendations concerning the cost of nursing education programs in general and the cost of implementing the long range plan.

The Statewide Master Planning Committee on Nursing Education has recently defined competencies for beginning nursing practice to assist in solving this dilemma of multiple entry levels and role confusion and diffusion. Currently, the Board and the Commission are jointly conducting research studies to validate the competencies. It is anticipated by the Fall of 1980 that short range recommendations will be completed to address the most urgent needs. This effort will be coordinated with the Health Care Planning and Oversight Committee of the General Assembly who this year was given the charge to study the nursing shortage and provide factual data on the states' need and demand for nurses. The issue of the nursing shortage is extremely complex and is not only a state problem but a national concern. With continued support and cooperation of the many individuals, agencies, and institutions, the Board will continue its effort to address this issue in a responsive and responsible manner within its authority as a state agency.

The Board has been cognizant of the importance of making its decisions in an atmosphere free of any real, implied or potential conflicts of interest. It upholds the philosophy that no member or staff member should hold an office in a professional nursing association. Also, as previously cited, the Board has made efforts in the past to eliminate associational language from the Nurse Practice Act that may be deemed unconstitutional or imply a conflict of interest. Board members abstain from discussions on decisions that they deem a conflict. The attorney general's office is represented at all Board meetings and provides legal guidance in these matters.

Dialogue with the Attorney General's office indicates they are not aware of any health regulatory boards which have a written policy on conflict of interest in South Carolina. The Attorney General's office is forwarding the American Bar Association standards on conflict of interest and the Board will begin to define appropriate policies and procedures in this area. Other state boards of nursing and the National Council of State Boards of Nursing have been contacted for information and guidelines on which to formulate policies.

The Board has worked closely with the State Personnel Division since it was established in 1975. It has maintained regular contact with the employee relations analyst and the classification and compensation analysts assigned to the agency. The leave records of all staff have been reviewed, and audited at least yearly by the State Personnel Division. As the report states "few regulations" have been promulgated by the state regarding compensatory time. Therefore, there have not been guidelines or policies at the state level to assist agencies in this area.

As stated earlier the demands for the services of this agency have grown tremendously in the last four years and the staff has not increased since 1977. During the past two years, one nurse consultant position was vacant for some time and another nurse was on maternity leave, as one currently is.

The established working hours of the agency are based on 37.5 hours per week. Often the professional staff are required to work nights and weekends providing legal speeches, meeting with regional and national consultants from the Southern Regional Education Board, the Regional Office on Nursing, the National League of Nursing, and others. We meet with groups who have conventions or meetings on weekends or nights and who seek the Board staff for consultation or advice. (i.e. nursing shortage). Often when these requests occur, the regular work has been scheduled such as survey visits, examinations, endorsement services, new nursing proposals, and it must continue; therefore, the demand for legitimate work hours is far in excess of the regularly required working schedule.

Our survey of other state agencies and consultation with the State Personnel Division indicates that other professional staff are afforded compensatory time in much the same manner as has been the case at this agency. The options regarding this matter seem to be to add additional staff, reduce services, or provide a reasonable compensatory time policy. In this regard, the Board is developing a formal written policy on compensatory time for the exempt employees based on those in effect at the Division of State Personnel, the State Department of Education, the Department of Health and Environmental Control and the State Highway Department. This policy when finalized by this agency will be reviewed and approved by State Personnel. It should be implemented soon. The policy will include a list of positions eligible and the circumstances under which time can be accrued.

To clarify the annual leave accrual issue, the State Personnel Division regulations allow a state employee to accrue and carry over each year up to 45 days of annual leave. Of the exempt staff, one staff member has 22 days of annual leave with the others having between 8 to 16 days. No resignations are anticipated; if resignations do occur, they would not have an adverse effect on the agency's budget as you surmise in your report.

As stated in the opening paragraph, the Board pledges to the citizens of South Carolina and the General Assembly its time and energy for increased accountability and public service. We will make every effort to continue to provide an efficient and effective agency in the regulation of nursing practice.

Sincerely,

STATE BOARD OF NURSING FOR SOUTH CAROLINA



(Mrs.) Ruth Q. Seigler, R.N.
Executive Director

RQS/bs

CC: Board Members